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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/550,306	04/14/2000	Ted Richards	6057/61524	9131
26646	7590	08/28/2006	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			OUELLETTE, JONATHAN P	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/550,306	RICHARDS, TED	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jonathan Ouellette	3629	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 January 2006 and 15 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5,6,8,9,14,15,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 and 16 is/are allowed.
- 6) ☒ Claim(s) 5,6,8,9,14,15,17 and 18 is/are rejected.
- 7) ☒ Claim(s) 19-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### ***DETAILED ACTION***

#### ***Response to Amendment***

1. Claims 1-4 and 10-13 have been cancelled; therefore, Claims 5-9 and 14-21 are currently pending in application 09/550,306.

#### ***Claim Objections***

2. Claim 19-21 objected to because they depend on cancelled Claim 2. Appropriate correction is required.

#### ***Allowable Subject Matter***

3. Claims 7 and 16 are allowed.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. **Claims 5-7, 9, 14-16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtzman in view of Broadcast.com (www.broadcast.com,**

**retrieved from Internet Archive Wayback Machine <[www.archive.org](http://www.archive.org)>, page range: 12/1/1998-12/7/1998).**

6. As per **independent Claims 5 and 14**, Kurtzman discloses a method (system) of providing user information related to a user's selection, the method comprising the steps of: receiving a user's selection and an indicium identifying the user; analyzing the user's present selection and previous selections, if any, and identifying at least one user interest category based on the user's present and previous selections; selecting at least one user information item from the at least one identified user interest category; associating or combining the at least one user information item (advertising) with the user's selection; and delivering the associated or combined at least one user information item and the user's selection to the user over an electronic network (Abstract, Figs.2-5d, C2 L1-35, C4 L11-55, C5 L8-25, C6 L1-67, C7 L1-22, C11 L57-67, C12 L1-42, C13 L20-26, C15, L1-44, C17 L1-17, C18 L1-35).
7. Kurtzman fails to expressly disclose wherein the selection is audio data.
8. Broadcast.com discloses a method/system for selecting and obtaining audio data from the Internet ([www.broadcast.com](http://www.broadcast.com)).
9. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included wherein the selection is audio data, as disclosed by Broadcast.com in the system disclosed by Kurtzman, for the advantage of providing a method (system) of responding to a request, with the ability to increase customer service by supplying a variety of available information formats (audio and video) to choose.

10. As per Claims 6 and 15, Kurtzman and Broadcast.com disclose wherein said step of analyzing and identifying comprises the steps of: assigning each of said user's present audio data selections and said user's previous audio data selections to said at least one user interest category, and counting the number of assignments to each of said at least one user interest category; and when the accumulated number of assignments to a selected one of said at least one user interest category is greater than a selected threshold number, identifying the selected one of said at least one user interest category as a category from which said at least one user information item is selected.
11. As per Claims 9 and 18, Kurtzman and Broadcast.com disclose selecting said at least one user information item to be an advertisement of at least one product that is related to said at least one user interest category.
12. **Claims 8 and 17 are rejected under 35 U.S.C. 103 as being unpatentable over Kurtzman in view of Broadcast.com.**
13. As per Claims 8 and 17, Kurtzman and Broadcast.com fail to expressly show choosing said at least one user interest category from the group of categories consisting of political news, economic news, cultural new, social news, technology news and music.
14. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (system) of responding to a request would be performed regardless of what interest category was selected. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*,

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703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

15. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have presented the user with a selection of interest categories consisting of political news, economic news, cultural new, social news, technology news and music, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

***Response to Arguments***

16. Applicant's arguments received 1/20/2006 and 6/15/2006, with respect to Claims 5, 6, 8, 9, 14, 15, and 17-21 have been considered but not persuasive. The rejection will remain as **FINAL**, based on the cited prior art.
17. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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18. The Applicant has made the argument that the cited prior art fails to analyze and assign the request to a category of potential requests based on the subject matter in the data requested, and then delivering at least two sets of data from the related category including the data requested by the request.
19. However, Kurtzman does disclose receiving a request for data from a user and matching advertisement data to the request to provide in unison with the user-requested data; wherein the advertisements can also be based on the content of the pages (category- URL pages) provided to the user (C6 L10-36)

#### *Conclusion*

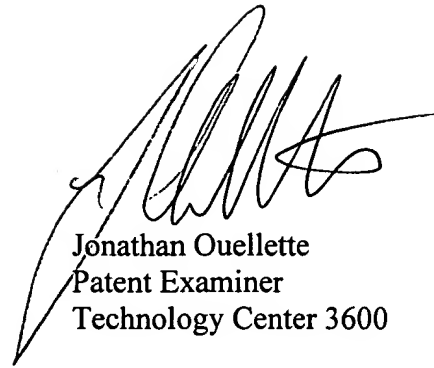
20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (571) 272-6807. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.
21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone numbers for the organization where this application or proceeding is assigned (571) 273-8300 for all official communications.
22. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Office of Initial Patent Examination whose telephone number is (703) 308-1202.

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August 21, 2006

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